

DISTRICT OF NEVADA

Defendants.

ORDER

Page 1 of 4

1 **II. DISCUSSION**

2 *A) Attorney's Fees under 42 U.S.C. § 1988*

3 Defendants assert that they are entitled to \$22,960.00 in attorney's fees pursuant to 42
4 U.S.C. § 1988. (Mot. Atty. Fees 4:4–5:11, ECF No. 68). Under § 1988, a court in its discretion
5 may award reasonable attorney's fees to the prevailing party. *Braunstein v. Arizona Dep't of*
6 *Transp.*, 683 F.3d 1177, 1187 (9th Cir. 2012). If the prevailing party is a defendant, the Court
7 may only award fees in “exceptional circumstances” where the plaintiff's claims are “frivolous,
8 unreasonable, or groundless.” *Id.*

9 In their Motion, Defendants argue that “exceptional circumstances” warrant the Court
10 imposing attorney's fees against Plaintiff. (Mot. Atty. Fees 5:5–11). In making this argument,
11 however, Defendants fail to address the threshold requirement that they be a prevailing party.
12 The Supreme Court has held that a party may be accorded “prevailing party” status only when
13 that party obtains judicial relief “creat[ing a] ‘material alteration of the legal relationship of the
14 parties.’ ” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532
15 U.S. 598, 604 (2001) (quoting *Tex. State Teachers Assn. v. Garland Indep. School Dist.*, 489
16 U.S. 782 (1989)). In the Ninth Circuit, a dismissal without prejudice does not constitute a
17 material alteration in litigants' legal relationship. *See Oscar v. Alaska Dep't of Educ. & Early*
18 *Dev.*, 541 F.3d 978, 982 (9th Cir. 2008). Accordingly, Defendants are not a prevailing party for
19 the purpose of attorney's fees.

20 *B) Attorney's Fees under 28 U.S.C. § 1927*

21 Defendants also argue that they are entitled to an award of attorney's fees under 28
22 U.S.C. § 1927. (Mot. Atty. Fees 5:12–6:17). According to Defendants, such sanctions are
23 warranted because Plaintiff frivolously caused unnecessary motion work and improperly
24 attempted to conduct discovery. (*See id.*). An award of sanctions under 28 U.S.C. § 1927
25 requires a finding of bad faith, which “is present when an attorney knowingly or recklessly

1 raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an
2 opponent.” *W. Coast Theater Corp. v. City of Portland*, 897 F.2d 1519, 1528 (9th Cir. 1990);
3 *see also Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998).

4 As an initial matter, the Court notes that sanctions under § 1927 apply to individual
5 attorneys, as opposed to law firms or parties. *See F.T.C. v. Alaska Land Leasing, Inc.*, 799 F.2d
6 507, 510 (9th Cir. 1986). Defendants’ Motion, however, refers only to Plaintiff’s collective
7 conduct throughout the proceedings. As Plaintiff has been represented by multiple attorneys
8 throughout this matter, the Court finds Defendants’ Motion too vague to support a finding of
9 sanctions. Furthermore, the Court does not find sanctions appropriate based on Plaintiff’s
10 failure to properly serve Defendants. While Plaintiff erroneously attempted to argue that
11 Defendants waived their objections to improper service, the Court does not find Plaintiff’s
12 argument so knowingly or recklessly frivolous as to give rise to a finding of bad faith. *See*
13 *Miller*, 146 F.3d at 711. Moreover, while Plaintiff filed a number of unsuccessful motions
14 throughout this matter, the Court denied these motions largely on procedural grounds due to the
15 pending service issue. As the Court did not reach the merits of these motions, the Court cannot
16 say that these filings constitute bad faith. The Court therefore declines to issue attorney’s fees
17 under § 1927.¹

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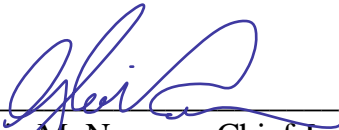
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25 ¹ For the reasons stated previously in this Order, the Court also declines to exercise its inherent authority to issue attorney’s fees. *See in re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996) (stating that courts may not invoke their inherent powers to sanction counsel absent a specific finding of bad faith).

1 **III. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendants' Motion for Attorney's Fees, (ECF No.
3 68), is **DENIED**.

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5 **DATED** this 14 day of March, 2018.

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9 Gloria M. Navarro, Chief Judge
10 United States District Judge
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